UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

APPISTRY, INC., Plaintiff, v. AMAZON.COM INC, et al., Defendants.	CASE NO. C15-311 MJP ORDER GRANTING DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS

THIS MATTER comes before the Court on Defendants' Motion for Judgment on the Pleadings. (Dkt. No. 139.) Having heard oral argument and considered the Parties' briefing and all related papers, the Court GRANTS the motion.

Background

Plaintiff Appistry, Inc. brings suit against Amazon.com, Inc. and Amazon Web Services, Inc., for infringement of U.S. Patent No. 8,200,746 (the "'746 patent") and U.S. Patent No. 8,341,209 (the "'209 patent"). (Dkt. No. 21.) Defendants move for judgment on the pleadings, arguing that Plaintiff's patents claim abstract ideas implemented on generic computers, and as such, are invalid under 35 U.S.C. § 101 and Alice Corp. v. CLS Bank Int'l, 134 S. Ct. 2347

(2014). (Dkt. No. 139.) Plaintiff opposes the motion, arguing that its patents do not claim abstract ideas, and that even if they do, they include numerous limitations that transform the ideas into patent-eligible applications. (Dkt. No. 154.)

Discussion

I. Legal Standards

A. Judgment on the Pleadings

After the pleadings are closed, a party may move for judgment on the pleadings. Fed. R. Civ. P. 12(c). A judgment on the pleadings is properly granted when, taking all the allegations in the pleadings as true, the moving party is entitled to judgment as a matter of law. Milne ex rel. Coyne v. Stephen Slesinger, Inc., 430 F.3d 1036, 1042 (9th Cir. 2005).

B. Patent Invalidity under 35 U.S.C. § 101

Laws of nature, natural phenomena, and abstract ideas are not patentable. Alice Corp. v. CLS Bank Int'l, 134 S. Ct. 2347, 2354 (2014). Otherwise, monopolization of those tools through the grant of a patent might tend to impede innovation more than it would tend to promote it, thereby thwarting the primary objective of the patent laws. Id. (citing Mayo Collaborative Servs. v. Prometheus Labs., Inc., 132 S. Ct. 1289 (2012).) At the same time, courts must tread carefully in construing this exclusionary principle "lest it swallow all of patent law." Id.

Accordingly, in applying the § 101 exclusionary principle, courts must distinguish between patents that claim the "building blocks" of human ingenuity and those that integrate the building blocks into something more, thereby transforming them into a patent-eligible invention. Id. To distinguish patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of those concepts, courts first "determine whether the claims at issue are directed to one of those patent-ineligible concepts." Id. at 2355. If so,

courts then ask "[w]hat else is there in the claims before [them]." Id. To answer the second question, courts "consider the elements of each claim both individually and 'as an ordered combination' to determine whether the additional elements 'transform the nature of the claim' into a patent-eligible application." Id. The Supreme Court characterizes the second step as a "search for an 'inventive concept,'" i.e. an element or combination of elements that is sufficient to ensure that the patent in practice amounts to significantly more than a patent upon the ineligible concept itself. Id.

II. Step One: Patent-Ineligible Concept

The Court must first determine whether the claims at issue are directed to a patent-ineligible concept.

Amazon argues that Appistry's patents are directed at the abstract idea of project management and distributed processing akin to the command and control system used by the military, among other organizations: use of a network of multiple actors to efficiently and reliably process information and/or complete a task by breaking down the job into small pieces, each handled by a different actor organized within an internal hierarchy. (Dkt. No. 139 at 14.) In support of this argument, Amazon points to the prosecution history of U.S. Patent No. 7,379,959—identified by Appistry as the parent patent of the patents-in-suit and incorporated by reference into them—which was originally rejected by the U.S. Patent Office because the claims were deemed unpatentable under 35 U.S.C. § 101, and which was later approved by the Patent Office when Appistry added the phrase "one or more computers including" to the claims. (Dkt. No. 139 at 11-12.)

Appistry argues that the claims are directed to "novel, specific, and inventive applications of multi-computer, distributed job processing that overcome the problems of previously existing

mission-critical computing platforms." (Dkt. No. 154 at 11.) In other words, Appistry argues that the claims cover a system of networked computers that communicate with each other and coordinate tasks through a hierarchical structure, and that these computing-oriented and computer-specific limitations take the claims out of the realm of the abstract. (Id.)

The Court finds that the asserted claims are directed to an abstract idea. The patents-in-suit recite the abstract idea of distributed processing akin to the military's command and control system, a longstanding and intuitive practice used by many large hierarchical organizations that value speed, efficiency, reliability, and accountability. The patents describe systems and methods of using a network of multiple actors to efficiently and reliably process information and/or complete a task by breaking down the job into small pieces, each handled by a different actor organized within an internal hierarchy. That the inventions describe this idea as implemented by computers or as existing solely in the computing realm, and thus that the inventions have no pre-computing analogues, does not "take[] the claims outside the realm of the abstract," as Appistry contends. (Dkt. No. 154 at 11.) Rather, it highlights the fact that the patents claim an abstract idea implemented in a particular technological environment: a "fabric" of inexpensive networked computers.

Appistry argues that the patent claims are not directed towards an abstract idea because they are not directed to a mathematical algorithm, a fundamental economic practice, or a longstanding commercial practice, and instead address challenges particular to distributed computer networks. (Dkt. No. 154 at 12.) Appistry's attempt to attach talismanic significance to the mathematical algorithm, fundamental economic practice, and longstanding commercial practice categories, however, has already been rejected by the Supreme Court, which explained in Alice that the operative question is whether or not the patent claims are directed toward an

abstract idea, and not whether or not the invention could be classified into one of Plaintiff's three categories. Alice, 134 S. Ct. at 2356-57. Appistry's arguments about the challenges of mission-critical computing and distributed computing, and the benefits that distributed processing using networked computers provides over previously available computing systems, are also unavailing—that an abstract idea is a good idea does not make it any less abstract.

The Court finds that the elements of all of the claims at issue (claims 1-5 and 23-27 of the '746 patent and claims 1, 9-11, 13-15, 23, 26, 34, 37-39, 47, and 50-52 of the '209 patent) are directed towards the same abstract idea, as discussed above, whether analyzed individually or as an ordered combination. Claim 1 of the '746 patent and claims 1 and 50 of the '209 patent are representative.

III. Step Two: Inventive Concept

Having determined that the claims are directed to an abstract idea, the Court next examines the elements of the claims to determine whether they contain an "inventive concept" sufficient to transform the claimed abstract idea into a patent-eligible application. Amazon argues that the claims do nothing more than take the abstract idea and apply it with computers, using only generic computers connected through generic networks. (Dkt. No. 139 at 16.) Appistry argues that the claims contain numerous limitations which transform the abstract idea into patent-eligible applications by addressing computing problems and thereby improving how computers function. (Dkt. No. 154 at 15.)

A claim that recites an abstract idea must include "additional features" to ensure that the claim is more than a drafting effort designed to monopolize the abstract idea. Alice, 134 S. Ct. at 2357. Mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent-eligible invention, meaning that if a patent's recitation of a computer amounts to

mere instructions to implement an abstract idea on a computer, the claims fail to be patent eligible. Id. at 2358. Given the ubiquity of computers, wholly generic computer implementation is not generally the sort of "additional feature" that provides any practical assurance that the process is more than a drafting effort designed to monopolize the abstract idea itself. Id.

The fact that a computer necessarily exists in the physical, rather than purely conceptual, realm, is beside the point. Id. Otherwise, computer implementation would allow applicants to claim any principle of the physical or social sciences by reciting a computer system configured to implement the relevant concept. Id. at 2359.

In Alice, the Supreme Court framed the relevant question at step two as "whether the claims here do more than simply instruct the practitioner to implement the abstract idea of intermediated settlement on a generic computer." Alice, 134 S. Ct. at 2359. The Supreme Court held that the Alice patents did not do more because "[t]aking the claim elements separately, the function performed by the computer at each step of the process is purely conventional." Id. (internal quotation marks omitted). The Supreme Court found that using a computer for electronic recordkeeping was "one of the most basic functions of a computer" and that use of a computer to obtain data, adjust account balances, and issue automated instructions are uses that are "well-understood, routine, conventional activities previously known to the industry." Id. The Supreme Court then considered the claims as an ordered combination and found that the claims "simply recite the concept of intermediated settlement as performed by a generic computer." Id. In making that finding, the Court noted that the claims did not purport to improve the functioning of the computer itself, and did not "effect an improvement in any other technology or technical field." Id. The Court rejected the petitioner's arguments that its system claims recited "specific hardware" configured to perform "specific computerized functions"

because the claims described only "purely functional and generic" hardware—in other words, because nearly every computer will include a "communications controller" and a "data storage unit" capable of performing basic calculation, storage, and transmission functions, "none of the hardware recited by the systems claims offers a meaningful limitation beyond generally linking the use of the method to a particular technological environment, that is, implementation via computers." Id. at 2360.

The Court finds that the claims at issue do no more than simply instruct the practitioner to implement the abstract idea of distributed processing akin to command and control on generic computers, connected through generic networks. The claims' invocation of computers adds no inventive concept because the functions performed by the computers at each step of the process are well-understood, routine, and purely conventional.

Appistry first argues that the inventions improve the way that computers function by specifically addressing previously existing computing problems, thereby "improv[ing] the utilization of computing resources and increas[ing] reliability and efficiency of computing systems." (Dkt. No. 154 at 15-18.) Essentially, Appistry argues that the inventions are technological improvements to computing because they can accomplish a processing task more quickly, more cheaply, and more reliably than previously available computing systems, such as mainframes or distributed super computers. But the actual systems and methods claimed—through which efficiency and reliability are achieved—are well understood, routine, and purely conventional, and do not supply an inventive concept separate from the underlying abstract idea. That computers send and receive information over a network "is not even arguably inventive." buySAFE, Inc. v. Google, Inc., 765 F.3d 1350, 1355 (Fed. Cir. 2014). That computers are capable of dividing a task between two or more linked computers in order to complete the task

more quickly and more efficiently is similarly basic. That building internal checks and safeguards into the process to ensure a previous task is adequately completed before moving on to a subsequent task will improve reliability and efficiency is not an inventive concept; rather, it is both conventional and obvious. Claiming those safeguards as being hierarchically implemented by various actors—here, networked computers operating as task directors, mid-level managers, and lower-level workers—is not inventive, and neither is combining or separating the actors' geographic locations to achieve a certain result. Given the ubiquity of computers, this type of wholly generic computer implementation does not supply the "additional feature" required at step two.

Appistry also argues that networked computers which provide multi-computer distributed job processing are not generic computers. (Dkt. Nos. 154 at 18, 196.) But the patents themselves contradict this assertion. Although using the technology claimed by the patents-in-suit may require some configuration of common commercially-available prefabricated computers, the patents themselves specify that they claim implementation on "generic computers" which are connected over "generic networks." The patents define the term "computer" as "used generically herein to describe any number of computers, including, but not limited to personal computers, embedded processing elements and systems, control logic, ASICs, chips, workstations, mainframes, etc." ('746 patent at 7:49-53; '209 patent at 8:22-26.) The patents define "hive engine" even more broadly as including not only "computers" but also "other computing devices;" the terms "network" and "communications mechanism" are used "generically herein to describe one or more networks, communications mediums or communications systems, including, but not limited to the Internet, private or public telephone,

cellular, wireless, satellite, cable, local area, … etc." ('746 patent at 14:38 and 8:14-22, '209 patent at 15:11 and 8:55-63.)

In effect, the patents' "numerous limitations" function only to limit the abstract idea of distributed processing akin to command and control to a particular technological environment, namely, networked computers. As the Supreme Court explained in Alice, Parker v. Flook, 437 U.S. 584 (1978), stands for the proposition that the prohibition on patenting abstract ideas cannot be circumvented by attempting to limit the use of the idea to a particular technological environment. Alice, 134 S. Ct. at 2358; see also buySAFE, 765 F.3d at 1355 (claims' narrowing to cover only online transactions was "an attempt to limit the use of the abstract guarantee idea to a particular technological environment, which has long been held insufficient to save a claim in this context"). Analyzing the claim elements individually or as an ordered combination yields the same result: the patents do not contain an inventive concept sufficient to transform the abstract idea into a patent-eligible application.

The Court finds that the claims of the patents-in-suit amount to the recitation of an abstract idea with instructions to apply the idea with ordinary computers connected through ordinary networks. As such, the patents claim patent-ineligible subject matter and are invalid under 35 U.S.C. § 101 and Alice Corp. v. CLS Bank Int'l, 134 S. Ct. 2347 (2014).

Conclusion

The Court finds that the patents-in-suit are invalid under 35 U.S.C. § 101. Defendants' Motion for Judgment on the Pleadings is GRANTED.

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The clerk is ordered to provide copies of this order to all counsel.

Dated this 9th day of July, 2015.

Marsha J. Pechman
Chief United States District Judge